

Message Text

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ACTION NEA-09

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INFO AMCONSUL BOMBAY

C O N F I D E N T I A L NEW DELHI 0578

E.O. 11652: GDS

TAGS: ENRG, IN

SUBJECT: CALTEX CUSTOMS PROBLEMS

REF: BOMBAY 2931

1. SUMMARY: 1973 CALTEX TAX EVASION CASE HAS TAKEN TURN FOR THE WORSE WITH BOMBAY OFFICIALS PLANNING TO BRING CRIMINAL CHARGES AGAINST TOP LOCAL CALTEX OFFICIALS. LOCAL OFFICIALS INITIALLY ASKED EMBASSY TO INTERVENE WITH GOI BUT NOW WISH TO REVIEW MATTER WITH NEW YORK HEADQUARTERS. WE (AND CALTEX) FORESEE LENGTHY CASE BEFORE THIS MATTER CAN BE RESOLVED.
END SUMMARY.

2. CALTEX HAS APPROACHED CONGEN BOMBAY AND EMBASSY WITH RESPECT TO CURRENT LEGAL PROBLEMS, INCLUDING POSSIBLE CRIMINAL CHARGES AGAINST LOCAL CALTEX EXECUTIVES. CALTEX PROBLEMS GO BACK TO NOVEMBER 1973 WHEN WORKING LEVEL OFFICIALS FALSIFIED DOCUMENTS TO SHOW THAT CERTAIN PRTROLEUM PRODUCTS HAD BEEN TRANSFERRED FROM BONDED STATUS PRIOR TO AN INCREASE IN APPLICABLE TAXES. CALTEX DOES NOT DENY THAT THE ACTION WAS ILLEGAL AND IT IS PREPARED TO PAY THE TAXES INVOLVED AS WELL AS A FINE THOUGH IT HOPES THAT THE RS. 2 MILLION FINE PRESENTLY ASSESSED WILL BE REDUCED ON APPEAL.

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3. IT IS, HOWEVER, CONCERNED ABOUT PROSPECT OF CRIMINAL CHARGES AGAINST TOP MANAGEMENT INCLUDING LEVENHAGES (US CITIZEN, V.P. CALTEX) AND DABORN (UK CITIZED, GENERAL MANAGER CALTEX). BOMBAY TAX OFFICIALS ARE TAKING THE POSITION THAT WORKING LEVEL OFFICIALS WOULD NEVER HAVE TAKEN THE ACTION TO FALSIFY DOCUMENTS WITHOUT ORDERS FROM THE TOP. CALTEX VIGOROUSLY DENIES THIS CHARGE AND THERE IS NO DOCUMENTARY EVIDENCE TO SUPPORT IT. NEVERTHELESS, LEVENHAGEN, DABORN AND 5 OTHER CALTEX EMPLOYEES ARE UNDER SUMMONS AND MUST APPEAR BEFORE A MAGISTRATE JANUARY 23 WHO WILL SET A DATE FOR A FORMAL HEARING. CALTEX FEARS THAT EVEN IF IT WINS THE CASE, A FINAL DECISION WILL TAKE YEARS. IT CON- TENDS THAT BOMAY TAX OFFICIALS ARE PRESSING THE CASE IN ORDER TO IMPRESS (OR MOLLIFY) THE COMMUNIST PARTY OF A LOK SABHA TAX COMMITTEE WHO HAD HEARD OF THE CASE. CALTEX BE- LIEVES THAT HIGH OFFICIAL OF THE PETROLEUM AND FINANCE MINISTRIES WOULD LIKE THE CASE DISMISSED SINCE IT HAS NO MERIT AND INTERFERES WITH GOI EFFORTS TO COOPERATE WITH FOREIGN PETROLEUM INTERESTS. HOWEVER, THEY ARE NOT PREPARED TO FORCE LOCAL BOMBAY OFFICIALS TO DROP THE MATTER, FEARING POLITICAL REPRECUSIONS.

&. IN JANUARY 10 MEETING WITH CHARGE AND POL AND ECON COUNSELLORS DABORN TOLD US THE HE HAD BEEN ADVISED THAT AN EMBASSY APPROACH TO MEA (OR THE MINISTER OF FINANCE) WOULD INDUCE THE GOI TO DRIP THE CASE. WE REPLIED WE WOULD BE PRE- PARED TO HELP CALTEX AND THE EMPLOYEES INVOLVED IN ANY WAY POSSIBLE BUT WE WERE OT AT ALL CERTAIN THAT THIS WOULD HELP CON- SIDERING THE POLITICS INVOLVED.A DECISIONTO DRIP THE CASE MIGHT WELL HAVE TO BE MADE BY THE PRIME MINISTER (IF THE MATTER HAD NOT ALREADY GOVE TO HER). WE WOULD BE PREPARED TO DIS- CUSS THE CASE WITH THE MINISTRY OF FINANCE, WHICH HAS JURISDICTION, IF CALTEX WISHED US TO DO SO. DARORN REPLIED HE PREFERRED ASK CALTEX NEW YORK BEFORE REPLYING AND WE AGREED THAT CONGEN BOMBAY WOULD PASS ON ANY MESSAGE DABORN WISHED TO SEND. DABORN TOLD US THAT IN HIS EARLIER MEETING WITH BRITISH HIGH COM- MISSIONER LATTER HAD DECLINED TO INTERVENE ON GROUNDS THT THIS WAS PENDING LEGAL MATTER WITH NO INDICATION THAT JUSTICE WOULD NOT BE DONE.

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5. COMMENT: IN THE INTERESTS OF BREVITY, WE HAVE GREATLY OVER- SIMPLIFIED A HIGHLY INVOLVED STORY BUT ARE POUCHING A DETAILED CALTEX PAPER WHICH COVERS THE ENTIRE HISTORY. DABORN APPEARS CONFIDENT THAT HE (AND LAVENHAGEN) WILL ULTIMATELY BE VINDI- CATED BUT FEARS THE DELAYS AND DIFFICULTIES ASSOCIATED WITH PROLONGED LEGAL PROCEEDINGS, PARTICULARLY INABILITY TO LEAVE THE COUNTRY.

6. THIS CASE IS BOTH SIMILAR TO AND DIFFERENT FROM THE DROBOT CASE. IT IS SIMILAR IN THAT CALTEX IS ADMITTEDLY GUILTY OF VIOLATING TAX LAWS ALSO, THE FEAR OF CPI CRITICISM WILL AT LEAST DISCOURAGE HIGHER LEVEL OFFICIALS FROM DISMISSING THE FLIMSAY CRIMINAL CHARGES AGAINST DABORN AND LEVENHAGED. IT IS DIFFERENT IN THAT (WE ASSUME) THEY ARE INNOCENT.

7. WE ARE PREPARED TO TAKE UP THIS MATTER WITH MINISTRY OF FINANCE OFFICIALS, IF CALTEX WISHES US TO DO SO. WE SEE LITTLE TO BE GAINED BY TALKING TO MEA. DABORN RAISED THE POSSIBILITY OF HIGH RANKING CALTEX OFFICIALS ATTEMPTING TO TALK TO SUBRAMANIAM DURING HIS CURRENT WASHINGTON VISIT. WE SAW NO OBJECTION TO THIS PROVIDING THE APPROACH WAS MADE THROUGH AMBASSADOR KAUL AND IT WAS LIMITED TO A REQUEST THAT HE LOOK INTO THE MATTER PERSONALLY (AS OPPOSED TO ASKING HIM TO DISMISS THE CASE).

8. THIS IS LIKELY TO PROVE A DIFFICULT CASE TO RESOLVE QUICKLY. IRONICALLY ENOUGH, IT TAKES PLACE AT A TIME THAT THE GOI SEEMS AT LEAST TEMPORARILY TO HAVE ABANDONED ITS PRESSURE TO BUY OUT CALTEX. WE WILL TAKE NO FURTHER ACTION UNTIL ASKED TO DO SO BY CALTEX.
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